

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

GFR, LTD.,

Plaintiff,

Case No. 1:18-cv-00238 (jlg)

v.

Hon. Gordon J. Quist

MARK FARNER,

Defendant.

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David A. Cvengros (P48504)  
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**AFFIDAVIT OF DONALD BREWER IN SUPPORT OF  
MOTION FOR PRELIMINARY INJUNCTION**

I, Donald Brewer, after being duly sworn, do depose and voluntarily state:

1. That I am a shareholder/member of GFR, Ltd., currently residing at 7882 S.E. Country Estates Way, Jupiter, Florida 33458.
2. That I have reviewed the allegations in the Complaint filed in the above-captioned matter, as well as the Motion and Brief for Preliminary Injunction, and the factual statements therein are true and accurate to the best of my information and knowledge.



3. That the filing of the above-captioned matter, as well as the Motion for Preliminary Injunction, against the Defendants, were authorized by the majority of the members of GFR, Ltd. in order to protect and preserve the intellectual property of GFR, Ltd.

4. That GFR, Ltd. owns a number of famous, incontestible registrations:

- Registration No. 2,820,656 for THE AMERICAN BAND;
- Registration No. 2,791,528, for GRAND FUNK RAILROAD THE AMERICAN BAND & Design; and
- Registration No. 1,936,824, for GRAND FUNK RAILROAD.

5. That prior to the initiation of any civil action against the Defendants in the above-captioned matter, I authorized GFR, Ltd.'s counsel to approach the Defendants and seek their concurrence in complying not only with a previously obtained Permanent Injunction as to GFR, Ltd. trademarks, but also what GFR, Ltd. believes to be infringements upon other registered trademarks of GFR, Ltd.

6. That the above-captioned matter was only filed after the attempt to resolve the matter without litigation was rejected outright by counsel for Mr. Farner. (See attached Exhibit A to this Affidavit.)

7. That I have been a member of the American rock band Grand Funk Railroad since it was formed and have been a member/shareholder of GFR, Ltd. since it was formed on June 12, 1996.

8. That the other members of GFR, Ltd. are Mel Schacher and Defendant Mark Farner.

9. That myself and Mel Schacher have been the only consistent members of the band Grand Funk Railroad since its inception and since 1996 and, for a period of time prior to that date, Defendant Mark Farner has operated as an independent solo act.

10. That in June of 2003, Plaintiff sued Defendant Farner in the Federal Court for the Western District of Michigan for violating its trademark resulting in a Permanent Injunction which dictates Defendant Farner's use of GFR, Ltd's trademarks, File No. 00-21249-CZ.

11. That litigation resolved that GFR, Ltd. and Mark Farner, via a Permanent Injunction voluntarily signed by Mr. Farner limiting his use of the trademarks of GFR, Ltd. to the specific uses defined by that Permanent Injunction.

12. That since entry of the Permanent Injunction, Defendant Farner has consistently violated the terms of that Permanent Injunction, resulting in numerous cease and desist letters to both Mr. Farner, his representative agencies, and the various venues at which he performs. (See cease and desist correspondence attached as Exhibit B, and the Affidavit of Stan Pace.)

13. That, despite these consistent violations, GFR, Ltd. resisted litigation to enforce the Permanent Injunction until such time that it was learned that Defendant Farner applied for a trademark for "AMERICAN BAND" which violates GFR, Ltd.'s Trademark No. 2,820,656 and, further, that Defendant's marketing through his website and venues violates the Permanent Injunction that Mr. Farner voluntarily signed.

14. That, in July of 1973, Grand Funk Railroad issued a studio album by the name of "We're an American Band." The single "We're an American Band" was written and sung by myself. That that single "We're an American Band" reached number 1 on the U.S. Billboard charts and included a logo of a pointing finger as described in the attached Exhibit C. That logo and the previously mentioned trademark "THE AMERICAN BAND" have since that time become synonymous with Grand Funk Railroad and are owned entirely by GFR, Ltd.

15. That Mr. Farner's logo, using the trademarked term "AMERICAN BAND," as well as a logo including pointing fingers (see attached Exhibit D), trade upon Grand Funk Railroad's legacy and may result in confusion to fans who desire to see the original band, not Mr. Farner's solo act.

16. That Defendant Farner is a member of GFR, Ltd., and has complete knowledge of the trademarks owned by the company as well as the origination of the term "AMERICAN BAND," the aforementioned trademark logo, and its association with the band Grand Funk Railroad. Further, as noted above, Mr. Farner has complete knowledge of his voluntary acquiescence to the Permanent Injunction and has been continually placed on notice of GFR, Ltd.'s intent to protect its intellectual property.

17. That GFR, Ltd. continues to operate and hold annual meetings which discuss not only the current operations of Grand Funk Railroad, but also the protection of its intellectual property rights and that, to the best of my information, knowledge and belief, Mr. Farner's actions are in direct opposition to his ownership and membership of shares of GFR, Ltd.

Further, Affiant sayeth not.




Donald Brewer

DATED: July 3, 2018

STATE OF FLORIDA )  
 ) ss  
COUNTY OF De Palm Beach )

On this 3<sup>rd</sup> day of July, 2018, before me, a Notary Public in and for said county and state, personally appeared Donald Brewer, to me known to be the same person described in and who executed the within instrument, and who acknowledged the same to be his free act and deed.



  
Notary Public  
Palm Beach County, Florida  
My commission expires:  
Acting in Palm Beach County, Florida